

Appendix 1 -
Federal and State
Environmental Requirements,
Regulations and Guidelines for
Their Implementation

APPENDIX 1
Federal and State Environmental Requirements, Regulations and Guidelines
October 17, 2003

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1.0 INTRODUCTION

Appendix 1 is a list of federal and state environmental laws, rules and regulations and the related FHWA and NYSDOT guidelines for compliance with such laws, rules and regulations in highway design. The list is grouped by area of environmental concern and can be looked at as a signpost that points the designer toward the appropriate environmental requirements and guidance for a specific environmental concern.

Appendix 1 was prepared in consultation with the Environmental Analysis Bureau. The Environmental Analysis Bureau is responsible (as part of its quality assurance role) for keeping environmental guidance current and for offering assistance when interpretations are needed. Questions or comments should be directed to the Regional Environmental Contact, who will contact the Environmental Analysis Bureau if necessary. It is important to realize that:

- (1) This list is not all inclusive with respect to environmental requirements for the Department's highway projects. It is just one tool for determining environmental requirements.
- (2) The notes, comments, etc. in the list are only cursory. The actual laws, rules, regulations, and guidelines should be consulted to assure compliance with the requirements.
- (3) Due to the frequency with which these federal and state rules and regulations change, care should be taken to assure that the most recent applicable rules and regulations are considered in the development of project design.

The Tables 1-1 and 1-2 contain a brief listing of common federal and state mandates that affect the Department's project development process. Table 1-3 contains the federal and state hearing requirements.

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Table 1 - 1 Federal Mandates

Mandates		Commentary
Bill -	A proposed law presented for approval to the legislature.	An Idea or concept for a mandate is proposed to Congress for legislation (law making) as a bill.
Act -	A decisional product delivered by the legislature, a statute, decree or enactment (e.g. ISTEA).	The approved bill is an act.
Law -	Enacted legislation. A set of rules or principles codified in USC (e.g. 23 USC is known as the Highway Law and 23 USC Section 128 concerns public hearings).	Legislation becomes law and is codified into United States Code (USC). Portions of the bill which are temporary (e.g. funding for a particular project) are not codified.
EO -	Executive Order from the President of the United States. The U.S. Constitution gives the President authority to create executive orders (e.g. EO 11990 Wetland Protection). Additionally EO's may result from legislation.	An EO may result from a law requiring executive branch action. An EO may not carry the weight of the law unless emanating from the law or having withstood judicial scrutiny. EO's are not codified in the CFR but may be referenced and their essence incorporated in a FAPG or Technical Advisory (TA).
CFR -	Code of Federal Regulations (e.g. Title 23 CFR Part 771.117, Title 40 CFR Part 1500).	Codes promulgate regulations from Federal Agencies (e.g. USDOT, USEPA, etc.) in order to implement laws. Regulations carry the weight of law and are subject to judicial notice and review. Judicial review interprets and may result in invalidation of all or several portions of the regulation. In such cases, the courts decisions govern until the regulation is changed to comply with such decisions.
Judicial Mandates -	Court orders resulting from litigation (i.e. Court decisions from legal cases).	
FAPG -	Federal Aid Policy Guide (formally called the FHPM).	Guidance on complying with CFR and EO's are contained in FHWA's Technical Advisories and the Federal Aid Policy Guide (FAPG), which is arranged similarly to the CFR.
TA -	Technical Advisory (e.g. T 6440.8A Guidance for Preparing and Processing Environmental and Section 4(f) Documents).	
NYSDOT Policy (concerning Federal mandates).		The above, along with applicable NYS mandates (e.g. NYCRR and NYS EO's) and accepted engineering practice, are incorporated into EI's and NYSDOT manuals (DPM, EPM, SPM, etc.).

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Table 1 - 2 NYS Mandates

Mandates		Commentary
Bill -	A proposed law presented for approval to the legislature.	An idea or concept for a mandate is proposed to the NYS Legislature for legislation (law making) as a bill.
Act -	A decisional product delivered by the legislature, a statute, decree or enactment (e.g. the State Environmental Quality Review Act).	The approved bill is an act.
Law -	Enacted legislation. A set of rules or principles (e.g. The Highway Law and The Environmental Conservation Law (ECL), which implemented SEQR). Contained in McKinney's Consolidated Laws of New York (Black Law Books).	Legislation becomes law and is printed in McKinney's Consolidated Laws of New York. Portions of the bill which are no longer in effect are generally not printed.
EO -	Executive Order from the Governor of NYS. The N.Y.S. Constitution gives the Governor authority to issue executive orders (e.g. Governor Pataki's EO 2 Ordering a Moratorium on Proposed Rules and Regulations). Additionally EO's may result from legislation.	An EO may result from a law requiring executive branch action. An EO may not carry the weight of the law unless emanating from the law or having withstood judicial scrutiny. EO's may be referenced and their essence incorporated in guidance issued by the NYS agencies
NYCRR - Judicial Mandates	State of New York's Official Compilation of Codes, Rules & Regulations (e.g. 6 NYCRR 617 (by NYSDEC), 17 NYCRR 15 (by NYSDOT)). Court orders resulting from litigation (i.e. Court Decisions from legal cases).	Codes promulgate regulations from NYS State Agencies (e.g. NYSDEC, NYSDOT, etc.) in order to implement laws. Regulations carry the weight of law and are subject to judicial notice and review. Judicial review interprets and may result in invalidation of all or several portions of the regulation. In such cases, the courts decisions govern until the regulation is changed to comply with such decisions.
Agency Guidance	The Environmental Procedures Manual (EPM) issued by NYSDOT's Environmental Analysis Bureau is an example of NYSDOT's manual containing environmental guidance.	Guidance on complying with NYCRR and EO's are published in the Environmental Procedures Manual. Note: The EPM supersedes most of the Interim Project Development Guidelines (IPDG's) and Project Environmental Guidelines (PEG's) issued by the Environmental Analysis Bureau.
NYSDOT Policy (concerning NYS mandates).		The above, along with applicable Federal mandates and accepted engineering practice, are incorporated into EI's, EB's and NYSDOT manuals (e.g. DPM, SPM, etc.)

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Table 1 - 3 Hearing Requirements

Area of Concern	Title or Common Name	Statutory Authority	Regulatory Authority	NYSDOT Guidance	Requirements	Comments
					Timing	
General Consideration of Environmental Consequences Hearing Requirement	Hearing Requirement of Federal-Aid Highway Act	23 USC 128	23 CFR 771.111(h) 40 CFR 1500-1508		Requirement for State to certify to Secretary that hearings were held, or opportunity for hearings afforded, to consider economic, social, and environmental effects of highway projects. 23 USC 128 also includes consistency with planning objectives and consideration of alternatives.	Requires certification that the hearing was held or opportunity therefore provided. See PDM Appendices 2 and 3.
					Follow the steps in Chapter 4 of this manual. Hearing requirements to be met before FHWA makes CE (except as discussed in the Class II steps in Part II of this manual), a FONSI or ROD.	
General Consideration of Environmental Consequences Hearing Requirement	Hearing Requirement NYS Highway Law	Section 17 Highway Law			Hearings must be held prior to construction or reconstruction at new location to consider social, economic, and environmental effects. Section 17 also includes consideration of various locations and designs.	Generally, §17 Hearing Requirement is satisfied by compliance with the hearing requirements of the EAP.
					Follow the steps in Chapter 4 of this manual and complete prior to SEQR DONSE or ROD. SEQR Type II projects are exempt.	

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General Consideration of Environmental Consequences Hearing Requirement	Hearing Requirement of Eminent Domain Procedure Law (EDPL)	Article 2 of EDPL		See Memoranda of: D. W. Harp 6/29/81 (Ofc. of Legal Affairs), J. E. Collison 7/3/81 (Real Estate Division), & K. Q. Smith 11/24/81 (Environmental Analysis Bureau).	Requires a hearing prior to acquisition to consider impact of project on environment and residents of locality.	Applicable exemptions to hearing requirements are: 1. Hearing on similar factors is held pursuant to other State, Federal, or local law. 2. Acquisitions de minimis in nature so that public interest will not be prejudiced. 3. Emergency situation in which public interest would be endangered by delay.
					Requirements of the EDPL Public Hearing must be met before Design Approval. Follow the steps in Chapter 4 of this manual.	

2.0 **FEDERAL AND STATE ENVIRONMENTAL REQUIREMENTS, REGULATIONS AND GUIDELINES**

Table 1-4 contains a listing of the state and federal environmental requirements, regulations and guidelines. It should not be used in lieu of the detailed guidance and requirements in the Environmental Procedures Manual.

The table contains references to the social, economic and environmental areas of concern; the title or common name of the act, order, law or regulation; the statutory and regulatory authority for the requirements; the timing of when to complete a given activity; and comments with additional information. Guidance on the duration of a particular environmental activity is not included in Table 1-4 as it may vary widely from project to project. Guidance on the anticipated duration for a particular environmental activity may be obtained from the Regional Environmental Coordinator.

Note that the timing section of Table 1-4 does not cover 100% state-funded projects that require federal permits (e.g. a Coast Guard or Army Corps of Engineers Permit). The timing for these projects should be determined by the Regional Environmental Coordinator (REC) and the Environmental Analysis Bureau, as necessary.

The Environmental Commitments and Obligations Package (ECOPAC) checklist includes many permits, etc. noted in this appendix. The designer, with the help of the Regional Environmental Group and the Regional Construction Group, should begin preparing the ECOPAC checklist in Design Phase I. As noted in the Design Phase VI steps in Part II of this manual, the Design Group should finalize the ECOPAC checklist at the end of Design Phase VI and transfer it to the Regional Construction Group.

The following is an index of the social, economic and environmental areas contained within Table 1-4. The index and Table 1-4 are in

the general order of Chapter IV of the Design Approval Document, as required by Appendix 7 of this manual (Scoping and Design Approval Documents). This is meant to enable quick cross-referencing between the applicable laws, regulations and procedures; the Environmental Procedures Manual; and the documentation needed in the Design Approval Document. Headings without page numbers indicate that this appendix does not include any specific guidance for the heading topic.

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Table 1 - 4 Social, Economic and Environmental Considerations for Chapter IV of the Design Approval Document

Area of Concern	Title or Common Name	Statutory Authority	Regulatory Authority	NYSDOT Guidance	Requirements	Comments
					Timing	
IV.A AFFECTED ENVIRONMENT AND SOCIAL, ECONOMIC AND ENVIRONMENTAL CONSEQUENCES						
General Consideration of Economic, Social and Environmental consequences	National Environmental Policy Act (NEPA)	42 USC 4321-4347 et seq. 23 USC 109(h)	23 CFR 771; 40 CFR 1500-1508 (CEQ Regs.); Exec. Order 11514, as amended by Exec. Order 11991 on NEPA responsibilities.	NYSDOT Project Development Manual EPM Section 2.2	Identification of environmental, social and economic effects; consideration of alternate courses of action; involvement of other agencies and the public. To assure that possible adverse environmental, economic and social effects of federal actions are fully considered and that final decisions are made in the best overall public interest.	If action is not categorically excluded, prepare EA and/or EIS to document federal actions that may significantly effect the human environment.
					The NEPA Classification (Class I, II or III) and final environmental determination/classification (ROD, FONSI or CE) must be done prior to design approval.	
General Consideration of Environmental Consequences	State Environmental Quality Review Act (SEQR)	Article 8 of the Environmental Conservation Law	6 NYCRR 617 DEC Statewide Regs. 17 NYCRR 15 DOT Implementing Regs.	EPM Section 2.1	Identification of environmental, social and economic effects; consideration of alternatives; requires adverse environmental impact to be minimized or avoided to the maximum extent practicable.	If action is not "Type II", "ministerial", "exempt", or "grandfathered", prepare an EA and/or EIS to document potential significant environmental effects. The NEPA EIS satisfies the SEQR EIS requirements. However, SEQR requirements apply independently of NEPA. A DEC "SEQR Cookbook" is available.
					The SEQR Type II determination, DONSE (i.e. Negative Declaration), or SEQR ROD must be completed prior to design	

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					Timing	
IV.B AFFECTED ENVIRONMENT AND SOCIAL, ECONOMIC AND ENVIRONMENTAL CONSEQUENCES						
IV.B.1 Social Consequences						
General Consideration of Social, Economic and Environmental consequences and their possible adverse impacts on minority or low income population's	Title VI of the Civil Rights Act of 1964.	Title VI of the Civil Rights Act of 1964;	23 USC 109(h) & 23 USC 324;		Requires each Federal agency to ensure that no person, on the grounds of race, color, sex, or national origin, is excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving federal assistance.	The documentation discussed below under Environmental Justice addresses Title VI concerns. Since Title VI applies to both federal and state funded projects, EA's and EIS's for 100% state funded projects should include a conclusion that the project will not have a disproportionately high and adverse effect on populations protected by Title VI.
		Civil Rights Restoration Act of 1987;	23 CFR 771.105(f);			
		Title VIII (Fair Housing) of the Civil Rights Act of 1968, amended 1974;	28 CFR 50.3;			
			42 USC 4601 - 42 USC 4655;			
			49 CFR 21			
		Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;			Complete prior to the final environmental determinations (DONSE, FONSI, SEQR ROD or NEPA ROD).	
		Age Discrimination Acts of 1967 and 1975;				
		Title IX of the Education Amendments of 1972.				

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					Timing	
General Consideration of Social, Economic and Environmental consequences and their possible adverse impacts on minority or low income population's	Environmental Justice	Executive Order 12898 Title VI of the Civil Rights Act of 1964	US DOT Order as published in the Federal Register on 4/15/97, Vol. 62, No. 72, pg.18377		Requires Federal agencies to achieve environmental justice by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, of its programs, policies and activities on minority populations and low income populations in the United States.	Applies to Federal-aid projects, programs and activities that affect human health or the environment. Document on all Federal-Aid EA and EIS (NEPA Class I & Class III) Projects. The EA or EIS should demonstrate that the project will not have a disproportionately high and adverse effect on populations protected by Environmental Justice.
					Complete prior to the final environmental determinations (DONSE, FONSI, SEQR ROD or NEPA ROD).	<p>A project which will have a disproportionately high and adverse effect on minority and low income populations may only be carried out if:</p> <p>(1) a substantial need for the project exists based on the overall public interest; <u>and</u></p> <p>(2) alternatives with less adverse effects on protected populations would either (a) have other adverse SEE or human health impacts that are more severe or (b) involve increased costs of extraordinary magnitude.</p> <p>Documentation is not required for NEPA Class II projects per FHWA guidance.</p>

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IV.B.2 Economic Consequences						

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					Timing	
IV.B.3. Environmental Consequences						
IV.B.3.a. Surface Waters/Wetlands						
(1) Surface Waters						
Waters of the United States, including Adjacent Wetlands	Corps of Engineers §404 Permits (§404 of the Federal Water Pollution Control Act)	33 USC 1344	33 CFR 320-330	EPM Section 4.7	A 404 permit is required for most discharges of dredged or fill material into waters of U.S., including adjacent interstate and isolated wetlands. Regulated activities include placement of pilings as fill and side-casting associated with ditching, draining and excavating activities.	Note the requirements of §401 of the FWPCA with regard to a Water Quality Certificate. Corps permit will be denied if the discharge is not in compliance with the "404(b)(1) Guidelines" established by EPA and found at 40 CFR 230; procedures for withdrawing area as disposal site pursuant to 404(c) are found in 40 CFR 231.
					The COE permit must be obtained before PS&E submission. Note: Early coordination requirements with the Corps of Engineers.	Dredged or fill material discharges of less than 1350 m ² (1/3 acre) into non-tidal waters of the United States that are isolated or above the headwaters (average annual flow < 0.14 cubic meters (5 CFS)), small streams, and/or adjacent wetlands, minor bank stabilizations, minor road crossings, and some NEPA categorical exclusions are covered by a nationwide permit provided DEC has issued a 401 water quality certification. Some NWP activities require pre-discharge notification to the Corps of Engineers.

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Waters of U.S. and Adjacent Wetlands	Water Quality Certification (Section 401 of FWPCA)	33 USC 1341		EPM Section 4.7	An applicant for a Federal permit or license to conduct any activity which may result in a discharge into waters of the U.S. must obtain a water quality certificate from the State agency charged with water pollution control.	The regulation of NYSDEC for the issuance of a Water Quality Certificate are contained in 6 NYCRR 608.9. DEC does not consider this to be merely a certification that standards will not be violated but considers the Water Quality Certificate to be a DEC permit within which they can place conditions, requirements, etc.
					The water quality certification must be obtained before the Federal permit or license is issued.	
Protection of Bed and Banks of Streams		Article 15 Title 5 of the Conservation Law (15-0501)	6 NYCRR 608	EPM Sections 4.3 and 4.7. DEC/DOT MOU Regarding ECL Art. 15 & 24, dated 2/12/97.	DEC coordination required to disturb beds of streams classified AA, AA(T), A, A(T), B, B(T), C(T)	DOT actions are exempt and <u>DO NOT</u> require DEC permit, however, DOT must coordinate review with DEC to assure project does not violate existing water quality standards or adversely impact aquatic habitat, pursuant to DEC/DOT MOU.
					Complete coordination prior to PS&E.	
(2) Wetlands						
Wetlands	Tidal Wetlands Act	Article 25 of the Environmental Conservation Law	6 NYCRR 661	EPM Section 4.7	Permit required from DEC for almost any activity that will alter tidal wetlands or adjacent areas. The approximate boundary of all tidal wetlands within jurisdiction are shown on official DEC maps.	Consult regulations for the definition of adjacent area (never more than 91.44 meters (300 feet)). Part 661 is applicable only to the counties of Nassau, Suffolk, Westchester, and Rockland and all boroughs of the City of New York. DEC "Tidal Wetlands Applicants Guide" available.
					Obtain permit before PS&E.	

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					Timing	
Wetlands	Freshwater Wetlands Act	Article 24 of the Environmental Conservation Law	6 NYCRR 663 6 NYCRR 664 6 NYCRR 665	EPM Section 4.7	<p>A permit is required for most activities that will alter freshwater wetlands or adjacent areas. The approximate boundary of all wetlands within jurisdiction are shown on official NYS Freshwater Wetlands Maps maintained by DEC & APA.</p> <p>Certain classes of activities may qualify for coverage under freshwater wetlands programmatic permits.</p>	<p>Applies generally to freshwater wetlands 5.0 hectares (12.4 acres) or larger and adjacent area, usually 30.48 meters (100 feet) from the boundary of the wetland. Law provides for local implementation of permit issuance upon filing of maps by DEC.</p> <p>Regulated wetland in Adirondack Park is 0.4 ha (1 acre) unless adjacent to a body of water or permanent stream, in which case there is no minimum size.</p> <p>Work can be carried out under authority of an interim permit after county map is filed, if the work is commenced within six months of the filing of the map. DEC "Freshwater Wetlands Applicants Guide" available.</p>
					Obtain permit before PS&E.	
Wetlands	Wetland Protection Policy of Delaware River Basin Commission	Section 21-0711 of the ECL Delaware River Basin Compact	21 NYCRR Parts 830 to 839 concerning the Delaware River Basin Commission.	EPM Section 4.7	<p>Generally, Commission review required for projects affecting 25 or more acres of wetlands within the Delaware River Basin. See 21 NYCRR Part 833 concerning project review.</p>	Commission review will attempt to weed out projects with unjustified, negative impacts on wetlands, permitting only those where there is no feasible alternative and for which an overriding public interest is demonstrated.
					See 21 NYCRR Part 833 concerning project review.	

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Wetlands	Presidential Executive Order 11990 Protection of Wetlands		DOT Order 5660. 1A (8/24/78) 23 CFR 777	EPM Section 4.7 5/19/97 memo from EAB with EO 11990 Programmatic Wetlands Finding (Signed by FHWA on 4/9/97).	<p>Mandates Federal agencies to avoid undertaking or providing assistance for new construction in wetlands unless:</p> <ol style="list-style-type: none"> 1. There is no practical alternative to such construction and 2. The proposed action includes all practicable measures to minimize harm to the wetland. <p>Evaluate and mitigate impacts on wetlands. Specific finding required in final environmental document.</p> <p>FHWA's wetland finding must be signed prior to (or with) FHWA's CE classification, FONSI or ROD. However, CE may meet the criteria of the April 9, 1997 Programmatic Wetlands Finding.</p>	<p>Note similarity to 4(f) requirement and 404(b)(1) Guidelines.</p> <p>Applicable to all wetlands in Federally-funded or permitted projects.</p> <p>Refer to the April 9, 1997 Programmatic Wetlands Finding.</p>
(3) Coastal Zone						
Coastal Zone	Coastal Zone Management Act	16 USC 1451 et seq.	Fed. Funding - 15 CFR 930.90 Fed. Permitting- 15 CFR 930.50.	EPM Section 4.2	Act only imposes requirements if a State management program exists. New York's management program is approved; certification and findings of consistency are required.	<p>New York has a coastal zone management law and program approved by the Federal government.</p> <p>CZMA re-authorized 10/90.</p>

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					Timing	
					If needed, NYS DOS certification statement and findings of consistency should be obtained before the final CE classification, FONSI or ROD. A preliminary statement and findings of consistency based on the preliminary plans in the DAD may be used if DOS will not provide the final certification until more detailed plans are developed. Final certification must be obtained by PS&E.	
Coastal Zone	Waterfront Revitalization and Coastal Resources Act	Article 42 of the Executive Law	Regs. for State Agency Actions 19 NYCRR 600 19 NYCRR 601	EPM Section 4.2	Law requires consistency of State Agency actions with State coastal area policies and consistency to the maximum extent practicable with approved local programs. Certification required.	Law became effective 7/21/81. Specific boundaries of coastal area are on official maps. However, coastal area includes coasts of Long Island, NYC, Hudson River to Troy, St. Lawrence River, Lake Ontario, and Lake Erie.
					Certification should be obtained before the SEQR DONSE or FEIS approval. A preliminary statement and findings of consistency based on the preliminary plans in the Design Approval Document may be used if DOS will not provide the final certification until more detailed plans are developed. Final certification must be obtained by PS&E.	
Areas Subject to Erosion	Coastal Erosion Hazard Area	Article 34 of Environmental Conservation Law	6 NYCRR 505	EPM Section 4.2	Law requires a permit from DEC for any project proposed for a coastal erosion hazard area.	Law became effective 7/27/81.
					Obtain permit before PS&E submission.	

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					Timing	
Coastal Barriers	Coastal Barrier Resources Act	16 USC 3501-3510 (P.L. 97-348)	43 CFR Subtitle A (interpretive guidelines and general statement of policy)	EPM Section 4.2	Applies to 12 system units in Suffolk Co. No new Federal funds can be used for construction/purchase of any road, airport, boat landing facility or other facility on a bridge or causeway to any system unit. Exceptions are maintenance, replacement, reconstruction, or repair but not expansion.	Applies to Suffolk County. Law adopted a system map of undeveloped coastal barriers. More may be added in future. Law signed 10/18/82; except flood insurance ban (effective 10/1/83).
					Approval required before Design Approval.	
(4) Navigable Waters						
Navigable Waters	Section 10 of the Rivers and Harbors Act of 1899 - Corps of Engineers Permit	33 USC 403	33 CFR 320-325	EPM Section 4.7	Prohibits the unauthorized obstruction or alteration, including the excavation of or depositing of materials in and the construction of any structure in or over any navigable water of the U.S., without a Corps of Engineers Section 10 Permit.	Note the requirements of §401 of the FWPCA with respect to the need to obtain Water Quality Certificates for §10 activities which involve the discharge of fill into waters of the U.S. Note: Requirements usually covered with 404 compliance but applies to excavation as well as discharge.
					The permit must be obtained before PS&E submission.	

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Navigable Waters	Section 9 of the Rivers and Harbors Act - Coast Guard Permit	33 USC 401 33 USC 525-533 23 USC 144(h)	33 CFR 114 - 115	Dept. Liaison with USGS is Coast Guard Compliance Unit, NYSDOT Structure Design and Construction Division.	No bridges or causeways may be constructed over navigable waters without a Coast Guard Permit. This prohibition is limited by 23 USC 144(h). Bridges over waters which are not tidal and which are not used or susceptible for use for interstate commerce do not require Coast Guard Section 9 Permit.	Note: 33 USC 401 requires USDOT approval, but this is delegated to Coast Guard by 49 CFR 1.46.
				See NYSDOT Bridge Manual Section 2 for additional information.	The Coast Guard permit must be obtained before PS&E submission.	
(5) Wild, Scenic and Recreational Rivers						

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National Wild and Scenic - Rivers System (Federal)	National Wild & Scenic Rivers System Act	16 USC 1271 et seq.	President's Env. Message (8/2/79) CEQ Memorandum (8/10/80) entitled "Inter-agency Consultation to Avoid or Mitigate Adverse Effects on Rivers in the Nationwide Inventory". 36 CFR 251, 297 43 CFR 8350	EPM Section 4.6	Consult with National Park Service of DOI in writing if a proposed Federal activity requires a NWP or Individual Permit and involves a Study or designated River (i.e. is a component of the National River System.). If the activity involves an Inventory River and the project impacts may adversely affect the river, consult with NPS in writing.	Aim of consultation is (1) avoidance and minimization of impacts to the river area or, (2) if avoidance and minimization are not possible, potential mitigation.
					Consultation should occur before the DEIS or EA title sheet is signed or the final CE classification is made.	
Wild, Scenic and Recreational Rivers (State)	Wild, Scenic and Recreational Rivers Act	Article 15, Title 27 of the Environmental Conservation Law	9 NYCRR 577 APA Regs. 6 NYCRR 666 DEC Regs.	EPM Section 4.6	Outside the Adirondack Park, possible DEC permit required for certain project activities located within certain distances of designated rivers, unless project is for maintenance or in-kind replacements of existing structures. Table of Use Guidelines found in Part 666.13 of the State Rivers Regulation should be consulted in determining the need for a permit.	APA has jurisdiction over privately-owned parcels of river areas within Adirondack Park. DEC has jurisdiction over publicly-owned river areas within the Adirondack Park and all river areas outside of the Park. Initial and additional designations to the wild, scenic and recreational river system are contained in Sections 15-2713, 15-2714 and 15-2715 of the ECL.
					Complete determination of effect on the resource before environmental determination is made. Permit should be obtained before PS&E submission.	

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Public Parks, Recreation Areas, Wildlife and Waterfowl Refuges and Public and Private Historic Sites	Section 4(f) - See Page A - 32 of this appendix.					
(6) Floodplains						
Floodplains	National Flood Insurance Act	42 USC 4001 et seq.	44 CFR 60 23 CFR 650, subpart A	See Structures Design and Construction Division.	No direct requirements for NYSDOT - Act does require states to develop and enforce implementing regulations.	FHWA compliance regulations are in 23 CFR 650, subpart A. New York State's compliance is through Article 36 of ECL and its implementing regulations.
					As a minimum, issues affecting designated floodplains should be analyzed/identified in the DAD.	
Floodplains	Exec. Order 11988 Floodplain Management		23 CFR 650, subpart A DOT Order 5650.2	See Structures Design and Construction Division.	Any Federal Agency which intends to undertake or support an action in a floodplain must: 1. Find that it is the only practicable alternative. 2. Design or modify the action to minimize potential harm to or within the floodplain. Per 23 CFR 650.115 the design is to consider capital costs and risks. 3. Notice requirements.	

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					Obtain FHWA's determination of compliance with EO 11988 before (or with) the final CE classification, FONSI or ROD.	
Floodplains	NYS Flood Insurance Compliance Program	Article 36 of the Environmental Conservation Law	6 NYCRR 502	See Structures Design and Construction Division.	Part 502 contains floodplain management criteria for State projects. If project meets all criteria, there are no procedural requirements. If project does not meet all criteria, a variance is required pursuant to §502.8.	Variance procedure is equivalent of DEC permit. (Note that a variance is virtually impossible to obtain.)
					Obtain variance before PS&E submission.	
IV.B.3.b. Water Source Quality						
Groundwater	Groundwater Classifications and Standards	Article 17 Title 3 of the Environmental Conservation Law	6 NYCRR 700 - 705	EPM Section 4.5	Regulations set quality and effluent standards for groundwater.	Generally applicable to salt storage, recharge basins and rest areas.
					Complete determination of effect on the resource before the environmental determination is made and, demonstrate compliance with applicable standard in DAD prior to Design Approval.	

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Surface Water	Classification and Standards for Surface Water	Article 17 Title 3 of the Environmental Conservation Law	6 NYCRR 700 - 705	EPM Section 4.5	Regulations set quality and effluent standards for surface waters.	
					Complete determination of effect on the resource before the environmental determination is made and, demonstrate compliance with applicable standard in DAD prior to Design Approval.	
Point Sources Water Pollution	State Pollutant Discharge Elimination System (SPDES)	Article 17, Titles 7 and 8 of the Environmental Conservation Law	6 NYCRR 750 - 758	EPM Section 4.3	Prohibits the discharge of pollutants via a point source except in compliance with a SPDES permit.	<p>Point sources are: discernible, confined, and discrete conveyances, e.g., pipes, ditches, channels, etc.</p> <p>Pollutants include dredged material, solid waste, chemicals, and sand.</p> <p>SPDES implemented by NYSDEC is a delegation of Federal Permit Authority under NPDES.</p>
					Obtain SPEDES permit before submission of PS&E.	

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Stormwater Discharge	State Pollutant Discharge Elimination System (SPDES)	33 USC Subsection 1342(p) Section 402(p) of the FWCPA Article 17 Title 7,8 and Article 70 of the Environmental Conservation Law	40 CFR Parts 122 - 124.	EPM Section 4.3	Requires filing of a SPDES Notice of Intent with DEC and development of a Stormwater Pollution Prevention Control Plan with impact greater than 0.4 ha (1 acre) on non-Tribal Indian lands.	EPA authorized DEC to administer the NPDES program on non-Tribal Indian lands through the DEC SPDES program. NYSDEC issued a SPDES Stormwater General Permit for Discharges from Construction Activities, effective January 8, 2003, GP-02-01 Memorandum of Understanding (MOU) between NYSDOT and NYSDEC dated June 2003.
					Requires EPA NPDES stormwater general permit for 2 ha (5 acres) or greater disturbance on Tribal Indian lands. Complete Stormwater Pollution Prevention Control Plan during the Final Design Stage and file the Notice of Intent at the time the PS&E Package is submitted to DQAB.	
Reservoirs supplying water to New York City	NYC DEP Watershed Regulations	NYS Public Health Law NYS Executive Order 51	City Administrative Procedures Act (CAPA) Regulations Chapter 18		Requires preparing Stormwater Pollution Prevention Plans for all projects involving 0.8 ha (2 acres) or more of disturbance.	
					Final Stormwater Pollution Prevention Plans must be submitted to NYCDEP at least 30 days prior to PS&E.	

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Sole Source Aquifers	Safe Drinking Water Act	42 USC 300(f) et seq.	40 CFR 141, 142, 143, 144, 149	EPM Section 4.4	No Federal participation in any project which EPA Administrator determines may contaminate sole source aquifer.	Kings, Queens, Nassau, and Suffolk Counties, Ramapo Township (Rockland County) and portions of Albany, Schenectady, and Saratoga Counties have been designated sole source aquifers. Applies only to projects with Federal financial assistance. EPA reviews all EIS's to determine possible contamination of aquifers (FHWA/EPA regional office MOU).
					Compliance with national primary drinking water regulations, State wellhead protection plans and MOA's between EPA and FHWA covering specific sole source aquifers.	
					Obtain EPA's determination of compliance with Section 1424(E) of the Safe Drinking Water Act before FHWA makes a CE classification, FONSI or ROD.	
IV.B.3.c. General Ecology and Wildlife						
Critical Environmental Areas	Critical Environmental Areas	Article 8 of the ECL	6 NYCRR 617.14(g)		Within the NEPA and SEQR process, coordinate and obtain agreement with officials with jurisdiction over designated area that the project is consistent with their policies.	Area officially designated as a critical environmental area.
					Complete coordination prior to final environmental determinations.	

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Fish and Wildlife	Fish and Wildlife Coordination Act	16 USC 661 et seq.			Requires consultation and coordination with the Fish and Wildlife Service and with State wildlife agencies for any Federally-aided or permitted construction project which involves impoundment, diversion, or channel deepening of any stream or other body of water (Water Resource Development Project).	Federal agencies must give "full consideration" to the report of the Secretary of the Interior and to the report(s) of any State agencies. Intent of the Act is to ensure that wildlife conservation receives equal consideration with other features of the project. Coordination is through the Section 404 program.
					Consultation and coordination should begin prior to Design Approval and be incorporated, as applicable, in the DAD. Prior to PS&E, complete the consultation with USFWS through the COE Section 404 program, and complete the consultation with DEC and the APA through the state wetlands permits program and the DEC Article 15 coordination.	

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Forest Preserve Lands	Forever Wild Provision of NYS Constitution	Article XIV of NYS Constitution			The State Constitution mandates the maintenance of the forest preserve land in a "Forever Wild" state, except that certain land can be removed from forest preserve for the purpose of eliminating hazards of dangerous curves and grades ("Land Bank").	Use of forest preserve land may trigger Section 4(f) if federal-aid. If the forest preserve is a National Register property (such as the case with the Adirondack Park) it may be subject to the Section 106 process, if federal aid or approvals are needed (e.g. ACOE permit). <u>Note:</u> Forest Preserve Lands in Catskills are not on the National Register of Historic Places.
					Complete before Design Approval.	
Endangered Species (Federal)	Endangered Species Act	16 USC 1531 et seq.	50 CFR 402 50 CFR 17	EPM Section 4.1	Federal actions which jeopardize or adversely modify critical habitats of endangered or threatened species or species proposed for listing are prohibited. Consultation requirements with Secretary of the Interior.	Endangered species list includes both plants and animals. Endangered wildlife listed 50 CFR 17.11. Endangered plants listed 50 CFR 17.12. Critical habitats listed 50 CFR 17.95. Periodically updated list does not contain proposed species or candidate species. Impact on proposed candidate species and listed species should also be considered. Coordination should occur routinely for DOT projects.
					Provide evidence of coordination with US F&WS before the final CE classification, ROD or FONSI.	

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Endangered Species (State)		Article 11 of Environmental Conservation Law		EPM Section 4.1	Establishes varying levels of protection for endangered animal species and protected native plants.	Natural Heritage Program of DEC is State contact for information. Coordination should occur routinely for DOT projects.
					Complete determination of effect on the resource before environmental determination is made. Obtain coordination approval letter before PS&E submission.	
Public Parks, Recreation Areas, Wildlife and Waterfowl Refuges and Public and Private Historic Sites	Section 4(f) - See Page A - 32 of this appendix.					
IV.B.3.d. Historical and Cultural Resources						

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Historic Sites (including archaeological sites)	National Historic Preservation Act (Section 106 Process)	16 USC 470f	36 CFR 800 36 CFR 60 36 CFR 61, Appendix A; 36 CFR 63 36 CFR 68	EPM Sections 2.F.1.A & 2.F.1.B	Procedure must be followed for properties or sites <u>on or eligible for inclusion</u> on the National Register of Historic Places. Procedure involves: 1. Identification 2. Determination of eligibility 3. Determination of effect 4. Identification of prudent and feasible alternatives 5. Consultation and agreement on mitigation measures with SHPO.	If National Register Property will be affected, §4(f) will usually apply. Further details may be obtained from the Environmental Analysis Bureau. Regular updates of National Register listings provided by the Environmental Analysis Bureau. Section 106 is applicable to Parkways on or eligible for the National Register of Historic Places and Forest Preserve within the Adirondacks. (See page A-32 of this appendix.)
	DOT Act (Section 4(f)) (See page A-32 of this appendix.)	23 USC 138 49 USC 303	23 CFR 771.135 Exec. Order 11593 (See page A-32 of this appendix.)	EPM Section 2.A	Obtain FHWA's determination of compliance with 36 CFR Part 800 before the final CE classification, FONSI or ROD. Note that M. E. Ivey's July 22, 1998 memo distributed a programmatic agreement for Section 106 Procedures that has eliminated the mandatory Advisory Council Review for determination of no adverse effect.	
Historic Sites	Section 110 of the National Historic Preservation Act	16 USC 470h-2	36 CFR 65 36 CFR 78	EPM 2.F.1.C	1. Protect National Historic Landmarks, Preserve and use federally owned National Register and Landmark (historic) buildings. Record historic properties prior to demolition. 2. Develop program to identify and determine effects on federally owned National Register and Landmarks properties and afford Advisory Council opportunity to comment in accordance with 36 CFR 800. 3. Ensure compliance with Section 106.	Consultation and coordination: SHPO, Advisory Council on Historic Preservation, DOI (NPS). Mostly applies to Federally-owned and controlled property.

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					Covered by compliance with 36 CFR Part 800, as shown above.	
Historic and Archaeological Preservation	Act for the Preservation of American Antiquities	16 USC 431-433	43 CFR 3		Preserve and protect National Historic Landmarks, historic and prehistoric structures, objects of historic and scientific interest, National Monuments.	Responsibility of Department or agency having jurisdiction over land on which resources may be situated (BIA, BLM, DOA, DOD, NPS, TVA, USFS), and SHPO, recognized Indian tribes, if appropriate.
					Permit required to examine ruins and other Archaeological resources on Federally or Indian-owned property.	
					Covered by compliance with 36 CFR Part 800, as shown above.	
Historic and Archaeological Preservation	Archaeological Resources Protection Act	16 USC 470aa-470	18 CFR 1312 32 CFR 229 36 CFR 296 43 CFR 7		Permit required for excavation and/or removal of archaeological resources from federal or Indian lands. Archaeological resources removed from federal or Indian lands remain the property of the US government or Indian Tribe. Maintain confidentiality of location of archaeological sites.	Permit issuance is by Department or agency having jurisdiction over land on which resources may be situated (BIA, BLM, DOA, DOD, NPA, TVA, USFS).
					Covered by compliance with 36 CFR Part 800, as shown above.	

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Historic and Archaeological Preservation	American Indian Religious Freedom Act	42 USC 1996 (P.L. 95-341)		EPM Section 2.G	Protect places of religious importance to American Indians, Eskimos, and Native Hawaiians.	Consult with knowledgeable sources to identify and determine any effects on places or objects of religious importance. Comply with §106 procedures if the property is historic. Consult with BIA, SHPO, State Indian liaison, Advisory Council on Historic Preservation if appropriate.
					All projects which affect places or objects of religious importance to Native Americans.	
					Covered by compliance with 36 CFR Part 800, as shown above.	

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Historic Sites	NYS Historic Preservation Act of 1980	Article 14 of the Parks, Recreation and Historic Pres. Law.	9 NYCRR 426, 427 & 428	EPM Section 2.G	§14.09 requires State agencies to consult with the Commissioner of Parks, Recreation and Historic Preservation if an agency action may have an impact on any property on or eligible for listing on the State register.	<p>The Assoc. Trans. Env. Specialist of EAB is DOT's "Agency Preservation Officer" (APO). The APO is liaison with OPRHP for the purpose of this program. Regulations revised 1991.</p> <p>Agencies may "grandfather" projects from §14.09 based upon a determination that they have been undertaken, approved, or funded before 8/22/80. DOT list submitted to DOB approved 8/3/81.</p> <p>Projects reviewed under Federal §106 process are not subject to the requirements of §14.09.</p> <p>100% State-funded projects on Historic Parkways are subject to §14.09.</p>
					SHPO Determination of Effect before Design Approval (for SEQR Type II projects), SEQR DONSE (i.e., SEQR Negative Declaration) or ROD.	

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Historic Bridges	Surface Transportation and Uniform Relocation Assistance Act of 1987	Section 123(f) Historic Bridges 23 USC 144(o) 49 USC 303	23 CFR 771.135	EPM Section 2.G K. Q. Smith's (EAB memo) (8/2/84) Print out with results of inventory of bridges built prior to 1925.	Complete an inventory of on and off system bridges to determine their historic significance. Encourage the rehab., reuse, and preservation of historic bridges. A marketing effort is required prior to demolition.	If the project effects a National Register eligible or listed bridge, Section 106 applies. If the project is affecting a National Register bridge, a Programmatic Section 4(f) usually applies. 1. Identify historic bridges on and off system. 2. Seek to preserve or reduce impact to historic bridges. 3. Seek a recipient prior to demolition. A programmatic evaluation does not apply to bridges listed as a National Historic Landmark. Coordination with SHPO, Advisory Council on Historic Preservation.
				EPM 2.A.1.D	Obtain FHWA's determination of compliance with 36 CFR Part 800 before the final CE classification, FONSI or ROD.	
IV.B.3.e. Visual Resources						
Natural Landmarks	National Registry of Natural Landmarks	16 USC 461	36 CFR 62	EI - 02- 025	FHWA has construed §102(2)(c) of NEPA as mandating that EIS specifically address the location of all Registered Natural Landmarks with the intent of demonstrating avoidance if possible.	Last revision of list approved: Federal Register Volume 53, No. 60; Tuesday, 3/24/88; Part VI, Latest list.
					Affected sites should be identified and analyzed in the draft environmental document so that the final environmental document can fully discuss impacts and mitigation related to such sites.	

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IV.B.3.f. Parks and Recreational Facilities							
Public Parks, Recreation Areas, Wildlife and Waterfowl Refuges and Public and Private Historic Sites	Section 4(f)	23 USC 138 49 USC 303	DOT Order 5610.1C	Nationwide evaluations, for projects with minor §4 (f) involvement.	Significant publicly-owned public parklands, recreation areas, wildlife and waterfowl refuges and all significant historic sites "used" for a transportation project.	\$4(f) compliance requires determination by Secretary of Transportation. "Use" has been construed in an extremely broad manner (e.g., activities near a park which significantly impact the park).	
			FHWA 23 CFR 771.135				
			UMTA 23 CFR 771.135 (Note: 49 CFR 622.101 makes 23 CFR 771 the UMTA environmental regulation)	EPM Section 2.A	Specific finding required: 1. There must be no “prudent and feasible” alternative to using the affected site; and 2. Includes all possible planning, to minimize harm.		FHWA has developed "Pro-programmatic" 4(f) evaluations for use on: 1. Historic bridges (9/8/83 KQS memo)
			FAA Order 1050.1C FRA Procedures for considering environmental impacts, §12 (6/16/80 Fed. Reg.)	Agency for coordination and consultation: DOI, DOA, HUD, State or local agencies having jurisdiction, and State Historic Preservation Officer (for historic sites). A Programmatic Section 4(f) is available provided the applicable criteria is met. One of the criteria stipulates that the officials with jurisdiction agree with the 4(f) impacts.	2. Minor parkland takings (2/3/88 MEI memo) and 3. Minor takings from historic sites (2/3/88 MEI memo). Programmatic Section 4(f) Evaluations are not applicable to EIS projects during preliminary design.		
			CG Commandant Instructions M16475.1A EO 11593			Note that Section 4(f) is not applicable to Historic Parkways unless the project will have an adverse impact on the Parkway (Ref.: Question 4.A of FHWA's 4(f) Policy Paper.).	

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					Complete prior to Design Approval for NEPA Class II projects or the environmental determination (FONSI, ROD) for NEPA Class I & III projects when the 4(f) impacts are identified during the Preliminary Design Stage. When 4(f) impacts are identified after Design Approval, the 4(f) Evaluation should be completed prior to PS&E. The Programmatic Sec. 4(f) should be complete prior to the Title Sheet signature or	
Parkland	Section 6(f)	16 USC 460I-8(f) 16 USC 460I-8(g)	36 CFR 59	EPM Section 2.D Updated lists sent out periodically. Most recent listing: MEI memo (1/31/91)	Property acquired or developed with assistance pursuant to 460I-8 (Bureau of Outdoor Recreation funds) may not be converted to other than outdoor recreational uses without the substitution of property and the approval of the Secretary of the Interior.	Although this is a Federal requirement, it also applies to 100% State funded projects. To the best of our knowledge, a 4(f) statement is always required on federal aid projects when there is §6(f) involvement. The §6(f) statement should include evidence of consultation with NPS. There should be an indication from NPS that an exchange of land can be reasonably expected. DOT has held that approval of the §6(f) is time consuming and need not be completed prior to submission of a §4(f) determination to the Secretary of Transportation.
					The review of the property to ascertain applicability of this should occur early in the project development process (i.e. during the Scoping Stage). Complete before environmental determination when possible. Must be complete prior to PS&E. However, coordination must be complete prior to a Programmatic Section 4(f) approval.	

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General Consideration of Environmental Consequences within the Adirondack Park	Adirondack Park Agency Act - Section 814 Review	§814 of the Exec. Law	9 NYCRR 579 (Vol. A-1)		Mandates Adirondack Park Agency review process for new land uses or developments within the Park.	No State agency shall undertake any project in the Adirondack Park which is determined by the APA to constitute new land use or development except in compliance with Section 814 of the Executive Law.
					Section 814 Process Executive Order 150 (1991) must be obtained before PS&E submission.	Note that Section 106 is involved since the Adirondack Park is a National Historic Landmark. Additionally, Section 4(f) is involved on federal-aid projects in the park.
Parkland	Section 1010 Urban Park and Recreation Recovery Program	16 USC 2501 et seq.	36 CFR 72	EPM Section 2.D	Property improved or developed with assistance under the program cannot be converted to other than public recreation uses without approval of Secretary of the Interior. Conversion must be in accord with local park program, and Secretary can condition as necessary to assure provision of adequate recreational properties and opportunities of reasonable equivalent location and usefulness.	Although this is a Federal requirement, it also applies to 100% State funded projects.
					The review of the property to ascertain applicability of this should occur early in the project development process (i.e., during the Scoping Stage). Complete before the final environmental determination.	

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Heritage Areas (Formerly known as “Urban Cultural Parks; name changed in 1994)	Urban Cultural Parks Act of 1982; 1994 Amendments changed name to “Heritage Area Program”	Articles 31, 33, and 35, Parks, Recreation and Historic Pres. Law			Fifteen State Designated Heritage Areas exist. More can be designated. State agencies shall consult, coordinate, and cooperate with OPRHP and local government on individual Heritage Areas. DOT is to conduct activities in a manner which is to the maximum extent practicable consistent with the approved Heritage Area Management Plan.	1. Heritage Area needs approved management plan. 2. DOT is to prepare and maintain a "program statement" detailing areas of planning, development, use, assistance, and regulation that can assist in the establishment and management of State Heritage Areas. 3. Law was effective 7/20/82.
					Complete before the final environmental determination (e.g. the final CE classification, DONSE, FONSI or ROD.)	
IV.B.3.g. Farmland Assessment						
Farmland (Federal)	Farmland Protection Policy Act of 1981	7 USC 4201-4209	7 CFR 658	EPM Chapter 2.5 Farmland.	The policy of the Act is to minimize the conversion of farmland to non-agricultural uses. Requires Federal agencies to develop criteria to identify the effects of their programs on agricultural lands and to take appropriate actions to bring their programs into compliance with the policies of the Act.	Requires NYSDOT to complete the Farmland Conversion Impact Rating Form AD 1006, to determine whether the site is farmland subject to the Act and, if so, whether the site needs to be given consideration for protection. 7 CFR Part 658 does not require avoidance of farmland, rather the consideration of farmland with other factors.
					Include Farmland Conversion Rating Form in DAD. If farmland is subject to Act, address consideration of protection in CE, EA or DEIS.	

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					Timing	
Farmland (State)		§305 of Agriculture and Markets Law	1 NYCRR Part 371 (2/28/96)	EPM Chapter 2.5 Farmland.	305.4 of the Agriculture and Markets Law conditions the power of the State Agencies to acquire with eminent domain within	If any project will acquire 0.4 ha (1 acre) from one farm within an agricultural district or more than 4 ha (10 acres) within any one Agricultural District, the Notice of Intent process, as defined in 1 NYCRR Part 371 must be completed. The Department must use all practicable means to realize the policy of Article 25-4A of the Agriculture and Markets Law and shall choose alternatives which minimize or avoid adverse impacts on agriculture.
					The Notice of Intent process must be completed before ROW acquisition occurs. However, before Design Approval, there must be a clear understanding between DOT staff, and Agriculture and Markets staff in regard to the particular project. Make certain that Agriculture and Markets does not have any strong concerns or issues regarding the project's impacts to farmland that may delay the project process after Design Approval occurs. (Given the fact that the Preliminary Notice of Intent has already been filed with Agriculture and Markets, it should be apparent whether or not they have any major concerns with the project.)	
IV.B.3.h. Air, Noise and Energy						
(1) Air						

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					Timing	
Air Quality	Clean Air Act (CAA)	42 USC 7401-7671q	23 CFR 770 sub.	EPM Chapter 1A (10/95)	Requires preparation and enforcement of a State Implementation Plan (SIP) revision for attainment of established National Ambient Air Quality Standards. All Federal actions must conform with the SIP and priority must be given to actions implementing it. There are special provisions concerning the "conformity" of federally funded or approved projects and State DOT projects.	In non-attainment and maintenance areas, all long range plans and TIPS (and program of projects in rural non-attainment areas) must conform to the SIP. Certain exempt projects in CO and PM-10 areas, all regionally significant transportation projects, and all non-exempt projects must conform to the SIP. (Note: CE projects requiring a conformity determination must be progressed as a "D List" categorical exclusion.)
	Clean Air Act Amendments of 1977	Amended by P.L. 101-549	40 CFR 6, 50-52, 55, 58, 60, 81 & 93.			
	Clean Air Act Amendments of 1990		6 NYCRR Part 200 series 40 CFR 51.390 - 51.464 (Transportation Conformity); 51.450 Applies to State Projects w/o Federal-Funding; 40 CFR 51.850 - 51.860 (General Conformity for federal, Non-FHWA /FTA projects)		Conformity determination with SIP before FHWA makes CE classification, FONSI or ROD. Involves consultation with EPA, MPO, NYSDEC and local air quality agencies. Other air quality permits (Part 200 Series) must be obtained before PS&E submission.	FHWA/FTA must consult with EPA. DOT (and MPO's as applicable) must consult with DEC.

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					Timing	
Air Quality	Indirect Source Permits	Article 19 of the Environmental Conservation Law	6 NYCRR 203	EPM Chapter 1A	<p>Indirect Source Permits are required for the following actions <u>only</u> if located in NY County south of 60th Street.</p> <ol style="list-style-type: none"> 1. Construction or modification of any federal or state owned parking facility, 2. Construction of new road where average daily traffic volume will exceed 20,000 vehicles within 10 years. 3. Modification of a road which will increase the average daily traffic volume by 10,000 vehicles within 10 yrs. 	<p>The 3/81 amendments of Part 203 exempt all areas of the State except New York County south of 60th Street from any indirect source permit requirement.</p> <p>For qualifying projects in the area of New York County south of 60th St., the permit applicant must show that the project will not cause new violations of an applicable air quality standard or exacerbate an existing violation or interfere with the maintenance or attainment of an air quality standard.</p>
					Obtain Indirect Source Permit prior to PS&E submission.	

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					Timing	
Airports - Air and Water Quality	Federal Airport and Airway Improvement Act of 1982 Highway Act	49 USC 47105, 47106, and 47107	14 CFR 152		Governor's certification of compliance with air and water quality standards.	Governor must certify that there is reasonable assurance that project will be located, designed, constructed, and operated so as to comply with applicable and water quality standards.
					Certification is a prerequisite to federal approval of the project.	
(2) Noise						
Noise	Noise Requirements of Federal-Aid Highway Act NYSDOT Noise Policy	23 USC 109(h); 23 USC 109(i)	23 CFR 772; Federal-Aid Policy Guide 12/9/91, Transmittal 1.	EPM Chapter 3.2 (8/96)	Noise study must be done for all Type I projects (as defined in 23 CFR 772 of the FAPG). Noise abatement must be considered for those areas for which noise impacts are determined to occur. Abatement must be included in plans and specifications if feasible and reasonable.	Although this is a Federal requirement, the absence of an applicable State regulation has led to the practice of applying it to 100% State funded projects. This has been incorporated in the Noise Analysis Policy.
					Noise study must be completed before Design Approval and discussed in DAD.	
(3) Energy						

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					Timing	
Energy	Exec. Order 12185		14 CFR 152 23 CFR 420, 450, 630 49 CFR 258, 260, 266, 622	EPM Chapter 1.B (3/95)	Requires maximization of the efficient use of energy and the conservation of natural gas and petroleum in programs receiving Federal financial assistance through Federal DOT. Is to be discussed in the DAD for EA and EIS projects.	
					Complete before Design Approval.	
IV.B.3.I Contaminated Materials Assessment						
(1) Asbestos						

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					Timing	
Asbestos	Clean Air Act National Emission Standards for Hazardous Air Pollutants (NESHAP)	42 USC 7412 Section 112	40 CFR Part 61, Sub-part M and Part 763	EI 96-026 (4/26/96) and EPM Chapter 1.3 (8/96)	Requires surveys on buildings to be demolished or bridges to be demolished or rehabilitated for asbestos-containing materials. Required special abatement procedures to prevent emission of asbestos fibers to ambient air. Disposal of asbestos-containing materials in approved solid waste facility. Requires abatement air quality monitoring.	
	Occupational Health and Safety Act (OSHA)	Labor Law, Article 30, Section 900-911	29 CFR 1910.1001		Project specific variances from 12 NYCRR Part 56 can be obtained from DOL, when required. Existing applicable or blanket variances can be used to facilitate abatement work.	
	New York State Labor Law		12 NYCRR Part 56 (Industrial Code Rule 56)		Obtain NYSDOL Asbestos Removal Variance prior to submission of the PS&E, if required.	
(2) Hazardous Waste						

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					Timing	
Hazardous Waste/ Contaminated Materials	<u>Federal</u> Resource Conservation and Recovery Act (RCRA), Comprehensive Env. Response, Compensation and Liability Act (CERCLA), Superfund Amendments and Reauthorization Act (SARA), Navigation Law (Oil and Hazardous Substance Liability) <u>State</u> Industrial Hazardous Waste Management Act, Inactive Hazardous Waste Disposal Sites Act Navigation Law (Oil Spills)	42 USC 6901-6992 42 USC 9601-9675	40 CFR 260-282 40 CFR 300-302 40 CFR 300-355 40 CFR 300	Chapter 5.1 of EPM	Proper disposal of hazardous wastes is regulated through a "cradle to grave" process. Liability for remediation of hazardous wastes/ substances sites attaches to all potentially responsible parties which include all present and former property owners, waste generators, transporters, and disposers.	Chapter 5.1 requires a hazardous waste/ hazardous substance assessment for all properties to be acquired by the Department and recommends screening on many other projects.
		33 USC 1321			Obtain NYSDEC remediation approval before PS&E submission.	
IV.B.3.j. Construction Impacts						

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					Timing	
(1) Borrow Areas						
Borrow Areas	Mined Land Reclamation Law	Article 23 Title 27 of ECL	6 NYCRR 420-426	Chapter 5.2 of EPM	A mining permit is required for mining of more than 907 metric tons (1000 tons (US)) or 575 cubic meters (750 cubic yards) of minerals within 12 calendar months at one location. A permit is also required for mining of more than 76 cubic meters (100 cubic yards) of material if it is adjacent to water bodies not regulated by 6 NYCRR 608 "Protection of Waters".	Mining does not include excavation integral to on-site construction. Contractors generally need permits for off-site borrow areas. DOT's contract specifications serve as both mining and reclamation plans (6NYCRR 422.1(d)). A MOU between DOT and DEC concerns off-site borrow areas which qualify as mines.
					Permit should be obtained prior to the PS&E date. Five years is the maximum permit term (6 NYCRR 421.2).	
(2) Spoil Areas						
Spoil Areas and Solid Waste Disposal including Petroleum-Contaminated Soils	Solid Waste Management	Article 27 of the ECL	6 NYCRR 360 6 NYCRR 364	EPM Chapters 5A and 5B	Wastes that are not regulated as hazardous wastes are regulated as solid wastes; Solid waste disposal facilities typically require a DEC permit. Sites used solely for the deposition of recognizable uncontaminated concrete, asphalt pavement, brick, soil or rock; or the disposal of trees, stumps, wood chips, and yard wastes (generated on property under the same ownership) are exempt from permitting.	DEC must be notified of leaking tanks and probable releases upon discovery.
	Navigation Law (Oil Spills)	Article 12 of the NYS Navigation-ion Law	6 NYCRR 611 6 NYCRR 612-614 (Tank Storage)		Petroleum tanks must be registered with DEC. Releases must be reported to DEC.	
					Spill Technology & Remediation Series (STARS) Memo #1 Petroleum-Contaminated Soil Guidance Policy	

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					Timing	
IV.B.3.k. Anticipated Permits, Approvals and Coordination						
Procedural Requirements for NYSDEC Permits	Uniform Procedures Act	Article 70 of the Environmental Conservation Law	6 NYCRR 621, 622, 624	EPM Chapter 2.E	This Act provided a uniform procedure for NYS DEC permit issuance. This procedure applies to all permits required by the NYS Environmental Conservation Law.	The hearing mandated is an adjudicatory hearing with sworn witnesses and cross-examination.
					Accompanies permit review and issuance process.	Amendments to 6 NYCRR Part 621 were effective 7/7/96. Amendments to 6 NYCRR Part 624 were effective 1/9/94.

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ABBREVIATIONS

APA	-	(NY) Adirondack Park Agency
BIA	-	(US) Bureau of Indian Affairs
BLM	-	(US) Bureau of Land Management
CAA	-	(US) Clear Air Act
CE	-	Categorical Exclusion per 23 CFR 771.117
CEQ	-	Council on Environmental Quality
CFR	-	Code of Federal Regulations
CFS	-	Cubic feet per second
CG	-	(US) Coast Guard
COE	-	(US) Army Corps of Engineers
CZMA	-	Coastal Zone Management Act
DEC	-	(NY) Department of Environmental Conservation
DOA	-	(US) Department of Agriculture
DOD	-	(US) Department of Defense
DOI	-	(US) Department of the Interior
DOL	-	New York State Department of Labor
DONSE	-	Determination of No Significant Effect (Same as Negative Declaration)
DOT	-	New York State Department of Transportation
DPM	-	Design Procedure Manual
EAB	-	(NYSDOT) Environmental Analysis Bureau
EAP	-	(NYSDOT) Environmental Action Plan
EB	-	(NYSDOT) Engineering Bulletin
ECL	-	(NY) Environmental Conservation Law
EDPL	-	(NY) Eminent Domain Procedure Law
EI	-	(NYSDOT) Engineering Instruction
EIS	-	Environmental Impact Statement
EPA	-	(US) Environmental Protection Agency
EPM	-	(NYSDOT) Environmental Procedures Manual
FAA	-	(US) Federal Aviation Administration
FAPG	-	(US) Federal Aid Policy Guide (Replaced FHPM)
FHPM	-	(US) Federal Highway Program Manual (Replaced by FAPG)
FHWA	-	(US) Federal Highway Administration

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FONSI	-	NEPA Finding of No Significant Impact
FRA	-	(US) Federal Railroad Administration
FWPCA	-	(US) Federal Water Pollution Control Act
HDM	-	(NYSDOT) Highway Design Manual
HUD	-	(US) Housing and Urban Development
IPDG	-	(NYSDOT) Interim Project Development Guideline (issued by EAB and replaced by the EPM)
MOU	-	Memorandum of Understanding
Neg. Dec.	-	SEQR Negative Declaration (Same as DONSE)
NEPA	-	National Environmental Policy Act (1969 et seq)
NPS	-	(US) National Park Service
NRCS	-	(US) Natural Resource Conservation Service
NWP	-	Nationwide Permit
NYCRR	-	The State of New York's Official Compilation of Codes, Rules and Regulations
OPRHP	-	(NY) Ofc. of Parks, Recreation and Historic Preservation
P.L.	-	(US) Public Law
PEG	-	Project Environmental guidelines (issued by EAB and replaced by the EPM)
ROD	-	Record of Decision
SEQR	-	State Environmental Quality Review Act (also abbreviated as SEQRA)
SHPO	-	(NY) State Historic Preservation Officer
SPDES	-	(NY) State Pollutant Discharge Elimination System
SPM	-	(NYSDOT) Scoping Procedure Manual
TA	-	(USDOT) Technical Advisory
TVA	-	(US) Tennessee Valley Authority
UCP	-	Urban Cultural Parks
USC	-	United States Code
USDAFS	-	U.S. Dept. of Agriculture Forest Service